

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JACINTA NALL, as Guardian of the Estate for  
TESSA JOY NALL; ALISSA NALL; ERIC  
MASSEY, as Parent and Guardian for D.M., a  
minor child; ERIC MASSEY, as Next Friend  
for D.W., a minor child; CRYSTAL NALL, as  
Next Friend for T.N., a minor child,

Plaintiffs,

vs.

CORRECT CARE SOLUTIONS, LLC, aka  
WELLPATH, LLC; KAREN LUDY, MHP,  
Individually and as Employee of CORRECT  
CARE SOLUTIONS, LLC; KAREN  
NYGAARD, RN, Individually and as Employee  
of CORRECT CARE SOLUTIONS, LLC;  
KITSAP COUNTY, A Municipal Corporation;  
GARY SIMPSON, SHERIFF, Individually and  
Officially as Employee and/or Agent of  
KITSAP COUNTY; MARK RUFENER, JAIL  
ADMINISTRATOR, Individually and  
Officially as EMPLOYEE and/or Agent of  
KITSAP COUNTY; SCOTT KASTEN,  
CORRECTIONS OFFICER, Individually and  
Officially as Employee and/or Agent of  
KITSAP COUNTY; STEVEN LAWSON,  
CORRECTIONS OFFICER, Individually and  
Officially as Employee and/or Agent of  
KITSAP COUNTY; GENIE ELTON,  
CORRECTIONS OFFICER, Individually and

No. 3:19-cv-05289-RJB

**DECLARATION OF KANY M. LEVINE  
IN SUPPORT OF PLAINTIFFS' MOTION  
TO COMPEL DISCOVERY AND  
REQUEST FOR ATTORNEY'S FEES  
AND SANCTIONS**

DECLARATION OF KANY M. LEVINE IN SUPPORT  
OF PLAINTIFFS' MOTION TO COMPEL DISCOVERY  
AND REQUEST FOR ATTORNEY'S FEES AND  
SANCTIONS-1

**THE LEVINE LAW FIRM, PLLC**  
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1 Officially as Employee and/or Agent of  
2 KITSAP COUNTY; JERRY RANDALL,  
3 Individually and Officially as Employee and/or  
4 agent of KITSAP COUNTY; GREG CHAVEZ,  
5 Individually and Officially as Employee and/or  
6 agent of KITSAP COUNTY; JOHN AND  
7 JANE DOES 1-10,

Defendants.

8 I, Kany M. Levine, hereby declare as follows:

9 1. I am over the age of 18, am competent to testify in this matter, and make this  
10 declaration based on my personal knowledge.

11 2. I am attorney of record for the Plaintiffs in the above-referenced matter.

12 3. I was retained by the family of Tessa Nall shortly after she suffered a serious and  
13 permanent brain injury during a suicide attempt at the Kitsap County Jail on August 17, 2017.

14 4. On December 4, 2017, I sent a preservation letter to Correct Care Solutions, LLC  
15 (hereinafter "CCS"), requesting, in the anticipation of litigation, *inter alia*, the retention and  
16 preservation of all documents, emails, and other electronic storage information ("ESI") relating  
17 to the attempted suicides of Tessa Nall on August 16-17, 2017. A true and correct copy of this  
18 letter, and a signed return receipt from CCS, is attached as *Exhibit A*.

19 5. On March 8, 2018, I sent another letter to CCS that reminded them of the  
20 preservation letter I had sent on December 4, 2017. A true and correct copy of this letter, and a  
21 signed return receipt from CCS, is attached as *Exhibit B*.

22 6. On August 13, 2018, I sent a letter and a draft complaint to prior counsel for CCS  
23 and Kitsap County in this matter, Craig McIvor of Lee Smart, P.S. A true and correct copy of  
24  
25

DECLARATION OF KANY M. LEVINE IN SUPPORT  
OF PLAINTIFFS' MOTION TO COMPEL DISCOVERY  
AND REQUEST FOR ATTORNEY'S FEES AND  
SANCTIONS-2

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1 this letter is attached as *Exhibit C*. Subsequent to Mr. McIvor's receipt of this letter, he and I  
2 discussed on the phone the possibility of attempting to negotiate a pre-filing settlement.

3 7. Mr. McIvor subsequently sent me a letter, dated September 11, 2018, wherein he  
4 referenced our draft complaint, indicated that he and his clients wished to investigate the  
5 possibility of a pre-filing settlement, and requested that I send him numerous materials related  
6 to the *Nall* case. A true and correct copy of this letter is attached as *Exhibit D*.  
7

8 8. I responded to Mr. McIvor's letter by way of a letter dated September 16, 2018,  
9 wherein I confirmed that Mr. McIvor was in receipt of the Bremerton Police Department's  
10 investigation of Tessa's attempted suicide, and also listed the materials that I had sent to Mr.  
11 McIvor for his review. A true and correct copy of this letter is attached as *Exhibit E*. True and  
12 correct copies of other correspondence by me to Mr. McIvor, indicating his knowledge of this  
13 matter, are attached as *Exhibit F*.  
14

15 9. Mr. McIvor then did not respond to my entreaties for approximately three months.  
16 I finally spoke with Mr. McIvor in March of 2019, wherein he indicated we could likely schedule  
17 pre-filing mediation in May of 2019. He also indicated that he would have an offer on this case  
18 for me within two weeks. Mr. McIvor's statement proved incorrect, and I filed this action on  
19 April 16, 2019. *ECF 1*.  
20

21 10. Michele Atkins of Fain, Anderson, Vanderhoef, Rosendahl, O'Halloran, Spillane,  
22 PLLC (hereinafter "FAVROS Law"), entered her notice of appearance in this case on April 26,  
23 2019. *ECF 3*. Chad Beck of FAVROS Law entered a notice of association of counsel on May  
24 3, 2019. *ECF 7*.  
25

1           11.     On August 22, 2019, I served on defendants, through their counsel Ms. Atkins  
2 and Mr. Beck, “Plaintiffs’ First Set of Interrogatories And Requests For Production To  
3 Defendants (hereinafter “Plaintiffs’ First Discovery Requests”).

4           12.     Defendant Correct Care Solutions, LLC, aka Wellpath, LLC (hereinafter  
5 “Wellpath”), did not provide a response to this request within 30 days as required by FRCP  
6 33(b)(2) (Interrogatories) and 34(b)(2) (Requests for Production).

7           13.     On November 22, 2019, I received a letter from Mr. Beck, dated November 21,  
8 2019, indicating that responses to Plaintiff’s First Discovery Requests were attached, but that  
9 these responses were “only from Kitsap County and not Correct Care Solutions/Wellpath,” and  
10 that he “hope[d] to supplement these discovery responses with information and documentation  
11 from Correct Care Solutions/Wellpath in the near future.” A true and correct copy of this letter  
12 is attached as *Exhibit G*.

13           14.     On December 11, 2019, Mr. Beck and I held a “meet and confer” teleconference  
14 pursuant to LCR 37(a)(1) to discuss Wellpath’s dilatory responses, which by then were nearly  
15 three months late. I indicated that I intended to file a motion to compel soon. Mr. Beck indicated  
16 that he expected to have Wellpath’s responses by December 13, 2019. Mr. Beck and I had  
17 another meet and confer on December 16, 2020, wherein he indicated that he had not yet received  
18 Wellpath’s responses, but again expected to very soon. Based on Mr. Beck’s continued  
19 assurances, I did not file a motion to compel at that point in time, and Wellpath finally served  
20 their responses on December 27, 2019. These responses are entitled “Plaintiffs’ First Set of  
21 Interrogatories and Requests for Production To Defendants, “*With First Supplemental*  
22  
23  
24  
25

1 *Responses Thereto*” (emphasis in original). A true and correct copy of Wellpath’s first responses  
 2 to Plaintiff’s first discovery requests are attached to this Declaration as *Exhibit H*.

3 15. Wellpath did not verify these responses as required by FRCP 33(b)(3) and (5).  
 4 Counsel for Wellpath certified in Wellpath’s response “The undersigned attorneys for  
 5 Defendants, Michele Atkins and Chad Beck, have reviewed the foregoing Plaintiff’s First Set of  
 6 Interrogatories and Request for Production and the answers thereto, and certifies that they are in  
 7 compliance with Federal Rules of Civil Procedure 26, 33, and 34.” *Ex. H*.  
 8

9 16. On January 17, 2020, Wellpath served their “Second Supplemental Responses”  
 10 to Plaintiff’s First Discovery Requests. A true and correct copy of Wellpath’s “Second  
 11 Supplemental Responses” to Plaintiff’s first discovery requests are attached to this Declaration  
 12 as *Exhibit I*.<sup>1</sup>  
 13

14 17. As was the case with Wellpath’s “First Supplemental Responses,” Wellpath did  
 15 not verify these responses as required by FRCP 33(b)(3) and (5), and counsel for Wellpath  
 16 certified in Wellpath’s response that “The undersigned attorneys for Defendants, Michele Atkins  
 17 and Chad Beck, have reviewed the foregoing Plaintiff’s First Set of Interrogatories and Request  
 18 for Production and the answers thereto, and certifies that they are in compliance with Federal  
 19 Rules of Civil Procedure 26, 33, and 34.” *Ex. I*.  
 20

21 18. Plaintiffs’ first discovery requests to Wellpath defines the word “Documents” as  
 22 including, among other definitions, “any computer readable media including, but without  
 23  
 24  
 25

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<sup>1</sup> Defendant Kitsap County served their responses to Plaintiffs’ First Discovery Requests on November 27, 2020.

1 limitation, emails, other electronically stored information, text messages, instant messages,  
2 direct messages . . .” *Ex. H* at 3-4 (hereinafter referred to as “ESI”).

3         19. Given the definition of documents as set forth in *Ex. H*, Plaintiffs requested ESI  
4 under its Request for Production (“hereinafter “RFP”) # 3--and all other RFP’s described here--  
5 as set forth in *Ex. H*. RFP #3 requested ESI concerning an individual defendant in this case,  
6 Karen Ludy, who was employed by Wellpath in the Kitsap County Jail on August 16-17, 2017.  
7 Wellpath, who contracted with Kitsap County to provide medical and mental health services to  
8 inmates at the Kitsap County Jail at that time, provided no ESI in response, stating in its response  
9 to RFP #3, “Subject to and without waiving the above objection, Wellpath/CCS is not aware of  
10 any supplemental documentation responsive to this request.” *Ex. H* at 8.  
11

12         20. In RFP # 4, Plaintiffs requested ESI related to individuals who had knowledge of  
13 defendant Karen Ludy’s statements to another employee of Wellpath, Lynn Hedlund, who knew  
14 that Ludy had lied about following Wellpath’s protocols when she released Tessa from a crisis  
15 cell, just before she attempted to commit suicide for the second time. Wellpath’s response was  
16 “Wellpath/CCS is not aware of any additional documentation at this time aside from what has  
17 previously been produced through discovery.” *Ex. H* at 9-10.  
18

19         21. In RFP #5, Plaintiffs requested ESI related to individuals who had knowledge that  
20 another individual defendant and employee of Wellpath, Karen Nygaard, or anyone else, had  
21 told Lynn Hedlund or any other agent of Wellpath to withhold information and cover up the fact  
22 that Karen Ludy had not followed Wellpath’s protocols when she authorized the release of Tessa  
23 from the crisis cell on August 17, 2017, and without assigning her to a special management cell.  
24 Wellpath responded “See Supplemental Answer to Interrogatory No. 5, incorporated here.” *Ex.*  
25

1 *H* at 11. Wellpath’s answer to Interrogatory #5 stated, “Without waiving the above objection,  
 2 Wellpath/CCS will provide contact information in accordance with the Federal Rules of Civil  
 3 Procedure and subject to applicable objections upon plaintiff’s identification of specific  
 4 witnesses who may have evidence reasonably calculated to lead to the discovery of admissible  
 5 evidence.” *Id.*

6  
 7 22. Plaintiffs’ RFP #9 requested ESI related to whom Wellpath interviewed with  
 8 regard to Plaintiffs allegations and all statements taken from those persons interviewed, to which  
 9 Wellpath responded, “See Supplemental Answer to Interrogatory No. 9, incorporated here.” *Ex.*  
 10 *H* at 14. Wellpath’s response to Interrogatory #9 was, “Subject to and without waiving objection,  
 11 Wellpath/CCS is not aware of anyone who was interviewed outside of the information contained  
 12 in the documentation produced thus far, including the KCIRT Investigation File.” *Id.*

13  
 14 23. Plaintiffs’ RFP #10 requested ESI related to any conversations or statements  
 15 made by any party or agent of any party to this lawsuit, or any witness, which related directly or  
 16 indirectly to Plaintiffs claims. Wellpath responded, “See Answer to Interrogatory No. 10,  
 17 incorporated here.” *Ex. H* at 15. Wellpath’s answer to Interrogatory #10 was, “Subject to and  
 18 without waiving above objection, Wellpath/CCS is not aware of any additional responsive  
 19 information aside from what has already been produced or is privileged.” *Id.* Wellpath did not  
 20 provide a privilege log with regard to RFP #10.

21  
 22 24. Plaintiffs’ RFP #17 requested ESI that related to communications made between  
 23 a defendant and any other defendant, or owners, managers, administrators, supervisors,  
 24 employees, or agents of any other defendants, about the allegations raised in this action. A  
 25 “Supplemental Response” from Defendant *Kitsap County* stated, “Additional objection is made

1 to the extent that this request calls for responsive documentation protected by the attorney work-  
2 product doctrine and attorney-client privileges. Subjection to these objections, see attached  
3 emails with associated redaction log from *Kitsap County*.” *Ex. H* at 20 (emphasis added). Thus,  
4 Defendant Wellpath did not respond to this RFP.

5  
6 25. In Wellpath’s “Second Supplemental Responses” to Plaintiffs’ First Discovery  
7 Requests,” Wellpath again did not respond to Plaintiffs’ request for ESI in RFP #17, as described  
8 in ¶24, above. *Ex. I* at 20.

9 26. Plaintiffs’ RFP #18 requests documents related to training by Defendants of  
10 Wellpath’s employees with regard to various categories of issues related to inmates’ mental  
11 health. Wellpath responded in its first response, “Subject to and without waiving objection  
12 above, Wellpath/CCS is in the process of searching for and obtaining documentation it possesses  
13 relating to training and will supplement this Response once discovered.” *Ex. H* at 20-21. In its  
14 Second Supplemental Response, Wellpath stated, “Subject to and without waiving previous  
15 objections, see attached.” No ESI was contained within the attached documents responsive to  
16 RFP #18. *Ex. I* at 20-21.

17  
18 27. Plaintiffs’ RFP #19 requests all documents related to Defendants’ policies and  
19 procedures, practices, and customs with regard to various categories of issues related to inmates’  
20 mental health. Wellpath responded in its First Supplemental response, “Subject to and without  
21 waiving objection above, Wellpath/CCS is in the process of searching for and obtaining  
22 documentation it possesses relating to training and will supplement this Response once  
23 discovered.” *Ex. H* at 21-22. In its Second Supplemental Response, Wellpath stated, “Subject  
24  
25



1 to and without waiving previous objections, see attached.” No ESI was contained within the  
 2 attached documents responsive to RFP #19. *Ex. I* at 21-22.

3 28. Plaintiffs’ RFP #22 requests all documents relating to the decision of Wellpath  
 4 and Kitsap County’s decision to not renew Wellpath’s contract to provide medical and mental  
 5 health services to inmates in the Kitsap County Jail. The only document produced was a letter  
 6 from Wellpath to the County, dated August 21, 2018, stating that Wellpath (then known as  
 7 Correct Care Solutions, LLC), did not intend to submit a bid in response to a new RFP posted  
 8 by Kitsap County. This letter was not produced by Defendant Wellpath, but was produced by  
 9 Defendant Kitsap County. Wellpath has never responded to RFP #22. *Ex. H* at 23; *Ex. I* at 23.  
 10

11 29. Plaintiffs’ RFP #23 requests that to the extent not already provided, Defendants  
 12 produce “all other non-privileged documents that concern or relate to this lawsuit.” Wellpath  
 13 has never responded to RFP #23. *Ex. H* at 23-24; *Ex. I* at 23-24  
 14

15 30. On February 17, 2020, the parties scheduled mediation for April 23, 2020. Given  
 16 the COVID 19 pandemic, however, the mediation was rescheduled for June 23, 2020. All parties  
 17 and their counsel agreed to hold off conducting depositions until after mediation as a way of  
 18 conserving resources and because it appeared settlement might be possible at mediation.<sup>2</sup>  
 19

20 31. On April 28, 2020, I notified defense counsel that Wellpath had still not provided  
 21 verifications for their two responses to Plaintiff’s First Discovery Requests. Wellpath did not  
 22 provide these verifications until June 1, 2020. The verifications were signed by “Andrew Small”  
 23 on May 26, 2020, and state that Mr. Small “has knowledge of the subjects raised by Plaintiffs’  
 24

25 

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 <sup>2</sup> The Court ordered mediation as part of its original scheduling order. *ECF* 19.

interrogatories above, has read the foregoing answers to those interrogatories, and declares under penalty of perjury under the Laws of the State of Washington that those answers are true and correct.” True and correct copies of these verifications are attached as *Exhibit J*.

32. On April 27, 2020, I served on defendants “Plaintiffs’ Third Set of Interrogatories And Requests For Production To Defendants (hereinafter “Plaintiff’s Third Discovery Requests”). A true and correct copy of Plaintiffs’ Third Discovery Requests is attached as *Exhibit K*. Plaintiffs requested “Documents”—again defined as including, among other definitions, “any computer readable media including, but without limitation, emails, other electronically stored information, text messages, instant messages, direct messages . . .”, *Ex. K* at 3-4--from Wellpath, specifically with regard to RFP #'s 25, 26, 27, 29, 30, and 31. Wellpath did not respond to Plaintiffs’ Third Discovery Requests within the 30 days required by FRCP 33(b)(2) and 34(b)(2).<sup>3</sup>

33. While subsequently conducting research via ECF on another case involving CCS/Wellpath, *Moreno, et. al. v. Correct Care Solutions, LLC, et. al.*, cause no. 4:18-cv-05171 (E.D. WA)--a jail inmate wrongful death case out of Benton County where Ms. Atkins and Mr. Beck also represent CCS/Wellpath--I discovered that the Court on June 1, 2020, had filed an “*Order Granting Plaintiffs’ Rule 37(e) Motion For Default Judgment*” against CCS/Wellpath. See ECF 145; *Estate of Moreno v. Corr. Healthcare Cos.*, 2020 U.S. Dist. LEXIS 108370. A true and correct copy of the *Moreno* Court’s “*Order Granting Plaintiffs’ Rule 37(e) Motion For*

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<sup>3</sup> Plaintiffs also requested discovery from Defendant Kitsap County in its third discovery requests, i.e. Interrogatory #'s 16, 18, and 19, and RFP #'s 28 and 32. Plaintiffs second written requests for discovery were only directed to Defendant Kitsap County.

1 *Default Judgment*” against CCS/Wellpath (hereinafter “*Moreno Default Order*”), is attached as  
 2 *Exhibit L*.

3         34. The *Moreno Default Order* revealed the Court had granted a default judgment  
 4 against CCS/Wellpath based on the massive, nationwide, intentional spoliation of emails by  
 5 Wellpath as part of their new, nationwide document “retention” policy that was implemented in  
 6 February of 2019—spoliation that included relevant ESI in *Moreno*—and that the purge of emails  
 7 began in March of 2019, approximately one month before the *Nall* case was filed. Wellpath  
 8 admitted the intentional spoliation, and in fact admitted that one reason for the destruction of this  
 9 ESI was to delete “bad emails that could be produced in discovery.” *Exhibit L* at 11-12, 16. It  
 10 thus appeared that this intentional destruction of ESI nationwide by Wellpath could have a  
 11 profound effect on the case in *Nall*, and in fact could be related to Wellpath’s dilatory discovery  
 12 responses—responses that when received, included no ESI.  
 13  
 14

15         35. On June 8, 2020, I had a “meet and confer” conference with Chad Beck  
 16 concerning Wellpath’s dilatory response to Plaintiffs’ third discovery requests, pursuant to LCR  
 17 37(a)(1). At this conference, I discussed with Mr. Beck what I had learned in the *Moreno* case,  
 18 that I expected to see Wellpath’s responses to Plaintiffs’ Third Discovery Requests promptly,  
 19 and certainly before mediation, scheduled for two weeks hence.  
 20

21         36. On June 9, 2020, I sent an email to Ms. Atkins and Mr. Beck memorializing the  
 22 situation with regard to Plaintiff’s third discovery requests. Given the fact I believed there was  
 23 a reasonably good chance of settling this case at mediation, I indicated I would not file a motion  
 24 to compel prior to mediation, but if we did not settle at mediation I planned to raise the issue of  
 25

1 Wellpath's systematic destruction of ESI in a future motion to compel. A true and correct copy  
2 of this email is attached as *Exhibit M*.

3 37. On June 20, 2020, I sent another email to Ms. Atkins and Mr. Beck indicating my  
4 concern over the situation in the *Moreno* case, i.e. the systematic destruction of ESI by Wellpath,  
5 and their continued dilatory responses, as well as non-responses, to Plaintiffs' first discovery  
6 requests. A true and correct copy of this email is attached as *Exhibit N*. I also attached a copy  
7 of the document preservation letter I had sent to Correct Care Solutions, LLC, on December 4,  
8 2017. *See Exhibit A*.

10 38. We proceeded to mediation as scheduled on June 23, 2020. We mediated for 10  
11 hours, until approximately 7:30 p.m. PST, at which point Wellpath requested a "pause" in the  
12 mediation as there were persons involved who were on the East Coast, where it was  
13 approximately 10:30 p.m. While some progress was made in mediation, the parties ultimately  
14 remained significantly apart. Plaintiffs made the last move, but Defendants have not resumed  
15 negotiating since.

17 39. I subsequently engaged in further research in the *Moreno* record and discovered  
18 that Exhibit H to a declaration in support of "*Plaintiffs' Rule 37(e) Motion for Default Judgment*  
19 *Against Defendants Correctional Healthcare Companies, Inc. and Correct Care Solutions, LLC*  
20 *for Spoliation of Evidence*" contained a 15 page list of all of Wellpath's employees in the United  
21 States that had litigation holds placed on their files at the time of Wellpath's ESI purge in March  
22 of 2019. While I have not yet done an exhaustive search of this list for all relevant witnesses in  
23 *Nall*, I have initially searched for four very obvious ones: defendants Karen Ludy and Karen  
24 Nygaard, and witnesses Patty Slaye and Lynn Hedlund. None of these four witnesses are on this  
25

1 list. This means that all ESI relating to these four witnesses was intentionally purged by  
2 Wellpath. A true and correct copy of the 15 page list of all of Wellpath's employees in the  
3 United States that had litigation holds placed on their files at the time of Wellpath's ESI purge  
4 in March of 2019 is attached here as *Exhibit O*.

5  
6 40. Further research into the *Moreno* record revealed Wellpath's director of Claims  
7 Management, Geri Ashley, had on January 9, 2019, sent a letter to Craig McIvor of Lee Smart,  
8 P.S., Wellpath's previous attorney in *both* the *Nall* and *Moreno* cases, requesting that he identify  
9 all open Wellpath files in his office, and that he provide from those open files the names of  
10 individual employed parties named in a lawsuit, and that he should also provide the names of  
11 individuals not named that could be considered key witnesses. A true and correct copy of this  
12 letter is attached here as *Exhibit P*.

13  
14 41. On January 16, 2019, Mr. McIvor wrote back to Wellpath with the list of open  
15 files. Included in this list was "Nall v. Kitsap County; Correct Care Solutions – Not in suit." A  
16 true and correct copy of this letter is attached here as *Exhibit Q*. Thus, Wellpath was placed on  
17 notice that the Tessa Nall case was an "open" file, but "not in suit."

18 42. Attached as *Exhibit R* is a true and correct copy of the "*Declaration of Richard*  
19 *Strickland in Support of Defendants Opposition to Plaintiffs' Third Motion to Compel Discovery*  
20 *From Correctional Healthcare and Correct Care Solutions*," dated and filed in *Moreno* on  
21 November 12, 2019. Mr. Strickland is the Information Technology Security Manager at  
22 Wellpath. His declaration clearly indicates that all emails of agents of Wellpath that were related  
23 to the *Nall* case would have been destroyed unless there was a litigation hold placed on those  
24 employees' emails, and thus supports the fact that, as indicated in the list of those Wellpath  
25

1 employees whose emails were placed on a litigation hold as set forth in *Exhibit O*, all emails  
2 pertaining to Karen Ludy, Karen Nygaard, Patti Slaye, and Lynn Hedlund, were intentionally  
3 deleted by Wellpath.

4         43. The *Nall* case was filed exactly three months after Mr. McIvor wrote to Wellpath  
5 indicating the presence of an open file in the *Nall* case. All of Wellpath's responses to Plaintiffs'  
6 written discovery requests, all of which were, or are dilatory, and most of which are either  
7 incomplete, misleading, false, or missing, were received after Wellpath was put on notice that  
8 the *Nall* case was "open." None of Wellpath's responses make the slightest mention of the  
9 company's document "retention" policy, instituted in February of 2019, or, pursuant to that  
10 policy, that ESI related to the *Nall* case was deliberately destroyed.

11  
12         44. Ms. Atkins and Mr. Beck filed Mr. Strickland's declaration in *Moreno* on  
13 November 12, 2019. That means that Ms. Atkins, Mr. Beck, and FAVROS Law were aware of  
14 Wellpath's systematic destruction of ESI pursuant to their document retention policy instituted  
15 in February of 2019, no later than November 12, 2019.

16  
17         45. On July 7, 2020, I sent a letter to Ms. Atkins and Ms. Beck raising the fact, *inter*  
18 *alia*, that based upon a number of the documents discussed in this declaration, emails relevant to  
19 the *Nall* case had almost certainly been destroyed. A true and correct copy of this letter is  
20 attached as *Exhibit S*. Neither Ms. Atkins nor Mr. Beck has responded to this portion of the  
21 letter.

22  
23         46. On July 13, 2020, I sent an email to Ms. Atkins and Mr. Beck requesting another  
24 meet and confer conference pursuant to LCR 37(a)(1). A true and correct copy of that email is  
25 attached as *Exhibit T*.

1           47. Mr. Beck and I conducted the conference on July 16, 2020. Mr. Beck indicated  
2 he had reached out to Wellpath, but they had provided no further information with regard to  
3 Plaintiffs' discovery requests.

4           48. Later that afternoon, Mr. Beck sent me an email stating that he had "just heard  
5 back from Wellpath regarding the status of its discovery responses," and that he had already  
6 received the county's responses which he could provide the following day. A true and correct  
7 copy of this email is attached as *Exhibit U*. I did not receive any discovery responses or further  
8 information from Mr. Beck on Friday, July 17, 2020.

9           49. On Monday, July 20, 2020, I received an email from Mr. Beck stating that he was  
10 waiting on "final verification from Wellpath to approve their discovery responses." A true and  
11 correct copy of this email is attached as *Exhibit V*.

12           50. That same day, I responded to Mr. Beck via email, once again stating my position  
13 on Wellpath's discovery responses throughout this case, in light of Wellpath's systematic  
14 destruction of ESI that came to light in the *Moreno* case. A true and correct copy of this email  
15 is attached as *Exhibit W*.

16           51. As of 4:30 p.m. on January 21, 2020, Wellpath had still not responded to  
17 Plaintiff's third discovery requests. Later that evening, as I was preparing to file Plaintiff's  
18 motion to compel, my declaration in support of Plaintiff's motion to compel, and numerous  
19 exhibits, I saw in my email that defense counsel had served Wellpath's responses to Plaintiffs'  
20 third discovery requests, at 4:53 p.m. These responses are 55 days late. I have not had the  
21 opportunity to review these responses at the time of the filing of Plaintiffs' motion to compel.  
22  
23  
24  
25

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.

3 DATED This 21<sup>st</sup> Day of July, 2020, at Kingston, WA.  
4

5  
6 s/ Kany M. Levine  
KANY M. LEVINE  
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DECLARATION OF KANY M. LEVINE IN SUPPORT  
OF PLAINTIFFS' MOTION TO COMPEL DISCOVERY  
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SANCTIONS-16

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following individuals:

Michele C. Atkins  
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DECLARATION OF KANY M. LEVINE IN SUPPORT  
OF PLAINTIFFS' MOTION TO COMPEL DISCOVERY  
AND REQUEST FOR ATTORNEY'S FEES AND  
SANCTIONS-17

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